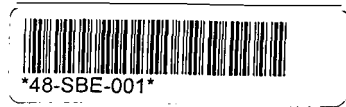


BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
R. C. JOHNSON)

In the Matter of the Appeal of)
MARGUERITE C. JOHNSON)

Appearances:

For Appellants : Walter K. Mitchell, Certified
Public Accountant

For Respondent : W.M. Walsh, Assistant Franchise
Tax Commissioner; Mark Scholtz,
Associate Tax Counsel

G P I N I O N

These appeals are made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Commissioner in denying the claims of R. C. Johnson and Marguerite C. Johnson for refunds of personal income tax, each claim being in the amount of \$812.60, for the year 1939.

The Appellants having failed to file income tax returns for the year 1939, the Commissioner, on or about October 6, 1944, issued jeopardy assessments against each of them in the amount of \$3,454.93 for that year. On December 14, 1944, Appellants' representative sent to the Commissioner a check in the amount of \$2,443.80, the accompanying letter stating, in part, as follows:

"... I am enclosing herewith on behalf of Rudolph C. Johnson and his wife, Marguerite Johnson, a check for \$2,443.80, the same being a requested payment on account of 1939 income taxes."

"... He /Mr. Johnson7 states that he is confident he does not owe the taxes demanded but appreciates your courteous consideration and offer to assist in adjusting the matter so is making the payment mentioned above at this time."

On or about September 19, 1946, Appellants filed income tax returns for 1939, each return showing a liability, including interest and penalties of \$409.30, and also filed the claims for refund which are the subject of this proceeding. Upon the receipt of the returns the Commissioner abated the jeopardy assessments. The Commissioner has not questioned the fact of overpayment by each Appellant but contends that the pertinent statutory provisions preclude the granting of the refunds. The provisions are as follows:

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". . . Every claim for refund must be in writing under oath and must state the specific grounds upon which the claim is founded." Section 20, Personal Income Tax Act.

"No credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer, or unless before the expiration of the period the commissioner certifies the overpayment to the State Board of Control for approval of the refunding or the crediting thereof." Section 19053, Personal Income Tax Law,

The position of the Commissioner must, in our opinion, be upheld. The letter of December 14, 1944, accompanying the remittance of \$2,443.80 clearly cannot be regarded as a claim for refund inasmuch as it fails to comply with the express requirements of Section 30 of the Act that a claim be made under oath and state the specific grounds upon which it is founded. The claims filed on or about September 19, 1946, do not meet the statutory requirements in that they were not filed within four years from the last day prescribed for filing the return (i.e., by June 15, 1944, a sixty-day extension having been granted to the Appellants for the filing of their 1934 returns) or within one year from the date of the overpayment (i.e., by December 14, 1945).

Appellants attempt to bring the claims within the one year period from the date of overpayment by contending that the payment of December 14, 1944, should be treated as a deposit and not a payment of taxes because, at that time, the amount due was not known and the returns had not been filed. We do not believe that the remittance could be so regarded, however, for the Commissioner had already issued the jeopardy assessments, and the accompanying letter does not in any way refer to the remittance as a deposit, but on the other hand describes it as a "... requested payment on account of 1939 income taxes." The deposit rather than payment theory was rejected under circumstances similar to those herein involved in Atlantic Oil Producing Co. v. United States, 35 F.Supp. 766, and Chicago Title Trust Co. v. United States, 45 F. Supp. 323.

We are compelled to conclude, accordingly, that claims for refund of overpayments of tax for 1939 have not been filed by Appellants in compliance with the statutory provisions governing such claims and that the Commissioner was without authority to grant refunds to them?

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O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 19060 of the Revenue and Taxation Code, that the action of Chas. J. McColgan, Franchise Tax Commissioner, in denying the claims of R. C. Johnson and Marguerite C. Johnson for refunds of personal income tax, each claim being in the amount of \$812.60, for the year 1939 be and the same is hereby sustained.

Done at Oakland, California, this 7th day of January, 1948, by the State Board of Equalization.

Wm. G. Bonelli, Chairman
J. H. Quinn, Member
Jerrold. L. Seawell, Member
George R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary